



[7590-01-P]

NUCLEAR REGULATORY COMMISSION

10 CFR Part 37

[Docket Nos. PRM-37-1; NRC-2014-0172; NRC-2015-0094]

Physical Protection of Category 1 and Category 2 Quantities of Radioactive Materials

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; consideration in the rulemaking process.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) will consider in the rulemaking process three issues raised in a petition for rulemaking (PRM), PRM-37-1, submitted by Anthony Pietrangelo, on behalf of the Nuclear Energy Institute (NEI or the petitioner). The petitioner requests that the NRC amend its regulations to clarify and expand current exemptions for when the physical protection measures for category 1 and category 2 quantities of radioactive material do not apply to a licensee.

DATES: The docket for the petition, PRM-37-1, is closed on **[INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

ADDRESSES: Further NRC action on the issues raised by this petition can be found on the Federal rulemaking Web site at <http://www.regulations.gov> by searching on Docket ID NRC-2015-0094, which is the identification for the potential future rulemaking.

Please refer to the petition Docket ID NRC-2014-0172 when contacting the NRC about the availability of information regarding this petition. You can obtain publicly-available documents related to this petition by using any of the following methods:

- **Federal Rulemaking Web Site:** Go to: <http://www.regulations.gov> and search for the petition Docket ID NRC-2014-0172. Address questions about NRC dockets to Carol Gallagher; telephone: 301-415-3463; e-mail: Carol.Gallagher@nrc.gov. For technical questions, contact the individual listed in the FOR FURTHER INFORMATION CONTACT section of this document.

- **NRC's Agencywide Documents Access and Management System (ADAMS):** You may obtain publicly-available documents online in the ADAMS Public Documents collection at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "[ADAMS Public Documents](#)" and then select "[Begin Web-based ADAMS Search](#)." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to pdr.resource@nrc.gov. The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that a document is referenced.

- **NRC's PDR:** You may examine and purchase copies of public documents at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Cardelia Maupin, Office of Nuclear Material Safety and Safeguards, telephone: 301-415-2312; e-mail: Cardelia.Maupin@nrc.gov; U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

SUPPLEMENTARY INFORMATION:

I. The Petition.

The NRC received and docketed a petition for rulemaking (ADAMS Accession No. ML14199A570) dated June 12, 2014, filed by Anthony R. Pietrangelo on behalf of the NEI. On October 28, 2014 (79 FR 64149) the NRC published a notice of docketing and request for comment on the petition. The petitioner requests that the NRC amend part 37 of Title 10 of the *Code of Federal Regulations* (10 CFR), “Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material,” to clarify and expand current exemptions in 10 CFR 37.11 for when the physical protection measures for category 1 and category 2 quantities of radioactive material do not apply to a licensee. The petitioner states that both licensees and the NRC have encountered significant problems with 10 CFR 37.11 that can only practically be remedied with a rulemaking. Specifically, the petitioner requests that the exemptions in 10 CFR 37.11(b) and (c) be revised and that a new 10 CFR 37.11(d) be added. The petitioner states that the exemption in 10 CFR 37.11(b) needs to be revised to remove undue regulatory burden on licensees with established physical security programs required by 10 CFR part 73, “Physical Protection of Plants and Materials.” The petitioner states the exemption should provide for a more direct recognition of the extent to which facilities with robust 10 CFR part 73 security programs already meet the objectives set forth in 10 CFR part 37 and inherently protect category 1 and category 2 quantities of radioactive material. The petitioner states that the exemption in 10 CFR 37.11(c) needs to be revised to improve its clarity, provide greater regulatory certainty, and ensure licensees implement 10 CFR part 37 consistent with the NRC’s

intent as expressed in regulatory guidance. Lastly, the petitioner states that a new exemption is needed to address the technical issues identified in Enforcement Guidance Memorandum (EGM) EGM-14-001, "Interim Guidance for Dispositioning 10 CFR part 37 Inspection Findings with Respect to Large Components and Robust Structures at Facilities Licensed Under 10 CFR Parts 50 and 52," (ADAMS Accession No. ML14056A151) for large components and material stored in robust structures.

II. Public Comments on the Petition.

The NRC solicited public comment through the notice of docketing and request for comment. The comment period closed on January 12, 2015. The NRC received seven comment letters. All seven letters were from members or representatives of the nuclear industry. The public comments supported NEI's request for rulemaking and urged the NRC to promptly initiate rulemaking to implement the changes proposed in the petition.

In addition to supporting the statements in NEI's PRM, some of the commenters also raised additional points in support of the petition. One commenter provided examples of some of the differences between 10 CFR part 37 and 10 CFR part 73 that the commenter did not believe resulted in an increased level of protection for category 1 or category 2 quantities of radioactive materials at power reactors, but must be addressed by licensees under 10 CFR part 37. Two commenters requested that the suggested change for large components and material stored in robust structures be expanded to include waste materials. One of the commenters suggested the inclusion of a dose rate criterion in the exemption.

The NRC considered the public comments in its analysis of the petition.

III. NRC Analysis.

This section presents the three issues raised by the petitioner followed by the NRC's analysis of the issues.

Issue 1: *Revise the Exemption in 10 CFR 37.11(b)*

The petitioner requests that 10 CFR 37.11(b) be amended to allow for byproduct material kept within any area for which 10 CFR part 73 requires access control to be exempted from 10 CFR part 37 requirements regardless of whether the byproduct material "activities" are specifically "included in" a 10 CFR part 73 security plan. The petitioner states that the exemption should recognize the extent to which the physical protection requirements in 10 CFR part 73 meet or exceed the requirements of 10 CFR part 37, so there is no need for any additional security measures or documentation in the 10 CFR part 73 security plan. The petitioner asserts that 10 CFR part 37 currently imposes undue burden on licensees that should be alleviated through a rulemaking.

NRC Response to Issue 1:

The NRC will consider Issue 1 in the rulemaking process. The NRC agrees that the language in 10 CFR 37.11(b) and the accompanying guidance in NUREG-2155, "Implementation Guidance for 10 CFR Part 37 Physical Protection of Category I and Category 2 Quantities of Radioactive Material" (ADAMS Accession No. ML13053A061), could be clarified as to what is being exempted and what action, if any, a licensee with a 10 CFR part 73 security plan needs to take to use the exemption. The exact wording of a revision to paragraph (b), if any, and the associated implications for the guidance document (NUREG-2155), would be determined during the rulemaking process.

Issue 2: *Revise the exemption in 10 CFR 37.11(c)*

The petitioner requests that 10 CFR 37.11(c) be modified to remove any ambiguity as to what type of wastes the exemption applies. The petitioner states that the language is difficult to understand and has prompted numerous inquiries and many discussions among NRC and the nuclear industry. The petitioner notes that the NRC's guidance document, NUREG-2155, does clarify the ambiguity; however, the petitioner states that the NRC should provide licensees and the public with greater regulatory certainty by clarifying the provision in the regulations.

NRC Response to Issue 2:

The NRC will consider Issue 2 in the rulemaking process. The petitioner raises regulatory stability and predictability concerns with respect to the language of the exemption provision. The NRC notes that the guidance in NUREG-2155 does clarify the intent of the exemption provision; however, the NRC agrees that the regulatory language should be clear.

Issue 3: *Add an Exemption to Address Large Components and Storage in Robust Structures*

The petitioner requests that 10 CFR 37.11 be revised to include a new paragraph (d) that would address large components and storage of radioactive material in robust structures. The petitioner states that the exemption in 10 CFR 37.11(c) only addresses waste material, and therefore, large components and non-waste material stored in robust structures that present a similar or lower risk for theft or diversion are not exempt from the 10 CFR part 37 requirements. The petitioner notes that as part of the 10 CFR part 37 implementation process, the NRC recognized this material as low risk and issued EGM-14-001 to address large components and storage of material in robust structures. The petitioner states that a rulemaking to codify the EGM's rationale would recognize the practicalities militating against theft or diversion and would avoid the long-term use of enforcement discretion and case-by-case exemption in this area.

The petitioner also states that definitions for “large component” and “robust structure” should be added to the regulations.

NRC Response to Issue 3:

The NRC will consider Issue 3 in the rulemaking process. The NRC has issued enforcement guidance (EGM-14-001) to address large components and storage of radioactive material in robust structures. The EGM states that it will remain effective until the underlying technical issue is dispositioned through rulemaking or other regulatory action.

IV. Determination of Petition.

The NRC has reviewed the petition and related public comments. Based on its review, the NRC will consider the three issues raised in the petition in the rulemaking process. The docket for the petition, PRM-37-1, is closed.

Further NRC action on the issues raised in PRM-37-1 can be monitored on the Federal rulemaking Web site, <http://www.regulations.gov>, by searching on Docket ID NRC-2015-0094, which is the Docket ID for the potential future rulemaking. In addition, the Federal rulemaking Web site allows you to receive alerts when changes or additions occur in a docket folder. To subscribe to alerts: 1) navigate to the docket folder (NRC-2015-0094); 2) click the “Sign up for E-mail Alerts” link; and 3) enter your e-mail address and select how frequently you would like to receive e-mails (daily, weekly, or monthly). The NRC also tracks all PRMs and rulemaking

actions on its Web site at <http://www.nrc.gov/reading-rm/doc-collections/rulemaking-ruleforum/petitions-by-year.html> and on the Federal rulemaking Web site, <http://www.regulations.gov>.

Dated at Rockville, Maryland, this 2nd day June, 2015.

For the Nuclear Regulatory Commission.

Michael R. Johnson
Acting Executive Director
for Operations.

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Dated at Rockville, Maryland, this 2nd day June, 2015.

For the Nuclear Regulatory Commission.

/RA/

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